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NOVEMBER 30. 1791.

ANS.—LORD DAER,
TO THE
and COMP. for PETER JOHNSTON, Esq; }

L. HILL. W. S. Agent.

M. Clerk.

A N S W E R S

FOR

The Right Honourable BASIL WILLIAM DOUGLAS, commonly called Lord DAER, Eldest Son of the Right Honourable Dunbar Earl of Selkirk; K

TO THE

PETITION and COMPLAINT of PETER JOHNSTON of Cairnfalloch, Esq.

AT the last Michaelmas meeting of the stewartry of Kirkcudbright, the respondent presented a claim to be admitted on the roll of freeholders; and, in support of it, he produced the titles mentioned in the complaint, which, upon examination, were admitted to be unexceptionable.

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The meeting therefore considered it to be their duty to sustain the claim, and to add the respondent's name to their roll, without regard to some objections stated by a freeholder present, which appeared to be at once irrelevant and incompetent.

They were justly of opinion, that it did not belong to them to try or decide upon the respondent's eligibility to parliament; and that the only question before them was, Whether or not the respondent was entitled to be put upon the roll of freeholders.

Their judgment upon this question was directed solely by a consideration of the statutes, under the authority of which they were met together. By these, they saw, it was enacted, in clear and unambiguous terms, that a person holding such a qualification as the respondent possesses, and producing such evidence thereof as he laid before the meeting, should be inrolled; and they could discover nothing in the statute book, that made the respondent an exception to the general rule. They were satisfied, therefore, that, by adding his name to the roll, they did no more than exercise an act of their jurisdiction, in obedience to the authority which conferred it.

Accordingly, the minority themselves have acquiesced in the judgment; and it is only at the instance of a single freeholder, who was not present at the meeting, that this complaint is brought.

This gentleman, aware of the incompetency of the objections stated at the meeting, has properly narrowed the ground of his complaint. The question of eligibility is dropped: and the only question submitted to your Lordships determination, is, Whether or not the freeholders did wrong in sustaining the respondent's claim of inrolment, in respect that he is the eldest son of a Peer of Scotland?

The complainer prays your Lordships to find, that the freeholders did wrong; and he arraigns their judgment as "adverse to the constitutional law of Scotland." But he refers to no principle of the constitution, to no statute disqualifying the eldest sons of Peers, nor to any legal precedent or authority, in support of the proposition he maintains. To an attack of this nature the respondent might rest satisfied with opposing the general, but conclusive defence, that
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being a *commoner* subjected to the burdens, and entitled to the privileges borne and enjoyed under the constitution by that order of men, and having, in the present instance, produced a sufficient legal qualification, the freeholders did right.

For the satisfaction of your Lordships, however, and more especially as your determination in this case may form a rule of decision with regard to the essential rights of a considerable body of the Commons of Scotland, the respondent thinks it proper to come forward with a particular explanation of the constitutional and legal grounds, upon which he, as the eldest son of a peer, and possessed of an estate affording a freehold qualification, was entitled to be put on the roll.

UNDER the feudal system, established in Scotland at a very early period, every freeholder, or person holding lands of the crown, was, by his tenure, bound to attend the king in parliament. These freeholders were originally few in number, and possessed of very extensive landed estates. But, by the natural fluctuation, and division of property, in the progress of society, their number was gradually increased, at the same time that their condition was rendered more unequal: And, from this inequality in point of wealth, arose the well-known distinction of freeholders, into *greater barons* and *lesser barons*. The rights of both these orders were the same: They differed only in the extent of their possessions, and in the degree of personal consideration, influence and power annexed to these. The obligation to attend in parliament continued, as well after as before the rise of that distinction, to be extended to all the freeholders within the realm, without regard to the size or value of their respective freeholds.

This is fully established by the following act of the Scottish parliament, passed in the reign of James the First: “ *Item, It is ordained* Act 1425. “ and statute, that all prelates, erles, barronnes, and *freeholders of the* c. 52. “ *King within the realme, sen they ar balden to give presence in the* “ *Kingis parliament and general counsel, fra thinesforth be balden to com-* “ *peir in proper person, and not be a procuratour; but gif the procuratour* “ *allege there, and prove a lauchfull cause of their absence.*”

This act is declaratory of the established constitution and law of parliament at the time. And it is expressed in terms too explicit, to admit
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the possibility of a doubt, but that every crown vassal in the kingdom, without exception, was, under its sanction, of right entitled, and in duty bound to be present in parliament.

No record, or account of the rolls of parliament, during this period, has been preserved ; but it is sufficiently ascertained, that the small barons attended very rarely and irregularly ; in consequence of which, the whole parliamentary jurisdiction was exercised by the greater barons, under very little controul. James I., who had resided for many years in England, where the monarchy had made greater advances than in his own country, and was a Prince of learning and discernment, first endeavoured, with a view to establishing a counterpoise to the power of the great barons, to enforce the attendance of all the small barons ; and, finding that impracticable, he next, in imitation of the form of the English constitution, resorted to the expedient of the well known act 1427, c. 102, dispensing with the personal attendance of the lesser barons, and empowering those in each county to choose two commissioners to represent them in parliament.

This act is as follows : “ The King, with consent of the haill coun-
 “ cel generallie, hes statute and ordained, that the small barronnes and
 1427. c. 102. “ free tenentes need not to come to parliments, nor general counceles ;
 “ swa that, if ilk schireffdome, their be send chosen at the head
 “ court of the schireffdome, twa or mae wise men, after the large-
 “ ness of the schireffdome, outtane the schireffdomes of Clackman-
 “ nan and Kinross, of the quhilks ane be sende of ilk ane of them ;
 “ the quhilk fall be called Commissaries of the Schire ; and be thir com-
 “ missaries of all the schires fall be chosen ane wise man and expert,
 “ called the Common Speaker of the Parliament, the quhilk fall pro-
 “ pone all and fundrie needis and causes pertaining to the communes in
 “ the parliament or general counsel ; the quhilk commissaries fall have
 “ full and haill power of all the laif of the schireffdome, under the wit-
 “ nessing of the schireff’s seale, with the seales of diverse barronnes of
 “ the schire, to heare, treate, and finally to determine all causes to be
 “ proponed in counsel or Parliament ; the quhilks commissaries and
 “ speakers fall have costage of them of ilk schire, that awe compierance
 “ in

“ in parliament or council, and of their rents, ilk pound fall be utheris
 “ fallow to the contribution of the saide costes, all bishoppis, abbottes,
 “ priors, dukes, erels, lords of parliament and banrentes, the quilks, the
 “ King will be receved and summoned to council and parliament, be
 “ his special precept.”

The lesser barons, whose poverty had given occasion to this regulation, laid hold of the dispensation which it bestowed upon them, without fulfilling the conditions which it required; and the act produced little or no effect. All the King's vassals, without exception, continued, as formerly, possessed of a right to be present in parliament; but, unless in some extraordinary conjunctures, none but the greater barons attended.

The respondent, however, thought it proper to recite the statute at length, in order to shew your Lordships, that it contains nothing that can be construed into an exception against him, but the reverse. It will be observed, that the legal distinction between the two orders is there, for the first time, drawn with clearness and precision, so as to leave no doubt with regard to that class of freeholders denominated “ small barons,” who were allowed to send representatives to parliament. Those who are required by this act still to attend parliament personally, are bishops, abbots, priors, dukes, earls, lords of parliament, and banrents. All other persons, not included in this enumeration, particularly *the eldest sons of Earls*, holding lands of the Crown, must necessarily be classed under the other denomination of “ small barons,” and free tenants,” empowered by the act to choose commissioners to parliament.

By the act of the same King, passed only two years before, it has been seen, that the constitutional right of these small barons to attend parliament in person, was solemnly recognized; and as the latter statute authorising them to elect commissioners to represent them in parliament was never carried into execution, so their right to attend personally, remained in its original force.

Accordingly, it appears from the rolls of parliament, that, during a period of above a hundred and thirty years subsequent to the statute last

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mentioned,

mentioned, the eldest sons of Peers were regularly in use of exercising their freehold rights, by attending parliament in person. In those ages, indeed, parliaments were seldom assembled; and as the subjects of deliberation were not always interesting to a martial people, it may be presumed that the meetings, upon ordinary occasions, were thinly attended by those who had the most undoubted right to be present.

Notwithstanding this, it appears from the records, and rolls which have been preserved, that between the years 1478 and 1560, no fewer than thirty-four eldest sons of Peers sat in parliament, upon sixty-four different occasions; and, in twenty-seven instances, when their fathers also were present.

The importance of these facts, in the respondent's argument, will be a sufficient excuse for troubling your Lordships with the following table, which will present to your eye, in one view, the practice of nearly a century, in explanation of the statute 1425.

Names

*Names of Peers Eldest Sons.**Sat in Parliaments,*

	Master of Erskine,	1478-9	1481	1481-2	1484	1484-5	1491
	Master of Hales,	1478-9	1481				
	Master of Mortoun,	1481-2	1487	1491-2			
	Master of Crawford, -	1481-2	1484	1484-5	1487		
5	Master of Kieth, -	1481-2					
	Master of Sommerville,	1481-2					
	Master of Kilmaurs,	1484					
	Master of Huntly, -	1485	1487-8				
	Master of Angus, -	1487-8	1489-90				
10	Master of Argyle, -	1488					
	Master of Lennox, -	1488					
	Master of Hume, -	1503-4					
	Master of Errol, -	1503-4					
	Master of Lindfay, -	1524-5	1525				
15	Master of Borthwick,	1540	1540-1	1542			
	Master of Ruthven, -	1540-1	1542				
	Master of Montrose, -	1542	1543	1546			
	Master of Eglinton, -	1543	1543	1544			
	Master of Erskine, -	1543	1546	1546			
20	Master of Buchan, -	1543					
	Master of Semple, -	1544	1545	1546	1546		
	Master of Ross, -	1544					
	Master of Rothes, -	1544	1545				
	Master of Hume, -	1545	1546	1546			
25	Master of Forbes, -	1546					
	Master of Glencairn,	1546	1546				
	Master of Ogilvy, -	1546					
	Master of Gordon, -	1558					
	Master of Caillis, -	1558					
30	Master of Marishall, -	1560					
	2d Master of Lindfay,	1560					
	Master of Sinclair, -	1560					
	2d Master of Sommerville,	1560					
34	2d Master of Glencairn,	1560					

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The defects of the early records exclude the possibility of obtaining a complete enumeration of all the persons who sat in parliament, during that long and ancient period. From your Lordships knowledge of the circumstances, your wonder rather will be excited, that the respondent has been able to trace so great a number, and in so clear and satisfactory a manner, as to dissipate every shadow of doubt upon the object of his inquiry.

In the situation above described and proved, matters continued till the year 1587; the eldest sons of Peers having, and, as often as occasion prompted, exercising, in common with all the lieges of the degree of commoners, holding lands of the Crown, their right, declared by the act 1425, of attending parliament in person.

In the long interval between these two periods, the aristocratical power of the nobles had, from various causes, gradually increased; and their influence in the state, after the accession of James the Sixth, was such as to suggest to the counsellors of that Prince the necessity of employing some expedient upon the part of the Crown, to balance their authority. The most effectual one for that purpose would have been to enforce the standing obligation upon all the small barons, to give personal attendance in parliament. But, as the experience of ages had induced conviction of the impracticability of this, recourse was had to the milder expedient of reviving the statute of 1427, whereby the small barons should be obliged at least to send commissioners regularly to represent them in parliament.

This measure was accordingly carried into execution by the following act: “ Our Sovereine Lord, considering the acts of Hienesse parliament halden at Linlithgow the tenth day of December, the zeir of God 1585 zeirs, mak and mention how necessar it is to his Hienesse and his estaites, to be truely informed of the ncedes and causes pertaining to his loving subjectes in all estaites, especially the commones of the realm; and remembering of ane gude and lovable act, made by his Hienesse progenitor, King James the First of worthy memory, in the parliament halden at Perth, the 1st day of March
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“ the zeir of God 1427 zeires, anent the commissioners of small bar-
 “ rones in parliament : That his Majestie and his said estaites would
 “ ratify and appreeve the same to have full effect, and to be put to
 “ execution in time cumming ; and of new statute and ordaine, for
 “ the mair full explanation of the same acte, and certaine execution
 “ thereof, that precepts suld be directed furth of the chancellary, to
 “ ane barone of ilk shire, first, to convene the freeholders, within the
 “ same shire, for chusing of the commissioners, as is contained in the
 “ same acte : Quhilkis commissioners, being anes chosen, and send to
 “ parliament, the precepts of parliament for convening of freeholders
 “ to the effect foresaid, to be directed to the last commissioners of ilk
 “ shire, quhilkis fall cause cheise twa wise men, being the king’s free-
 “ holders, resident indwellers of the schire, of gude rent, and weel
 “ esteemed, as commissioners of the same schire, to have power, and
 “ to be authorisid as the act proports, under the commissioner’s seall,
 “ in place of the scherriff’s : And, *that all freebalders of the King un-
 “ der the degree of prelates and Lords of parliament*, be warned be pro-
 “ clamation, to be present at the chusing of the saids commissioners,
 “ and nane to have voit in their election, but sik as hes fourtie-shilling
 “ land in free tennendry halden of the King, and hes their actual
 “ dwelling and residence within the same schire : Quhilk matter being
 “ remitted be the saidis estaites, convened in the said parliament, at
 “ Linlithgow, to the will and good consideration of our said Sovereine
 “ Lord, to doe and ordaine therein as his Hienesse should think maist
 “ expedient and requisite betwixt and his next parliament ; and now,
 “ his Majesty intending, God willing, to take ordour for the final set-
 “ ling and establisshing of that gude form and ordour maist meet and
 “ expedient, to stand in perpetuity in this behalf, according to
 “ the effecte of the said acte of parliament, maid at Linlithgow, in
 “ consideration of the great decay of the ecclesiastical estate, and uthers
 “ maist necessar and weighty considerations moving his Hienesse ;
 “ therefore his Majesty now, after his lawful and perfeite age of 21
 “ ziers complete, sittand in plane parliament, declaris and decernis the
 “ said acte, maid be King James the First, to take full effect and execu-
 “ tion,

" tion, and ratifies and appreeves the same be thir presents ; and for
 " the better execution thereof, ordains the commissioners of all the schi-
 " ressidomes of this realme, according to the number prescribed in the
 " said acte of parliament to be elected by the freeholders foresaid, at the
 " first head-court after Michaelmas zeirly ; or failzing thereof, at any
 " uther time quhen the said freeholders please convene to that effect,
 " or that his Majesty fall require them thereto ; quhilks conventions his
 " Majesty declaris and decernis to be lawful : And the saids commif-
 " sioners being chosen as said is, for ilk sheriffdome, their names to be
 " notified zeirly in write, to the director of the chancellary be the com-
 " missioners of the zeir preceding ; and thereafter, quhen any parlia-
 " ment or general convention is to be halden, that the said commissioners
 " be warned at the first, be vertew of precepts furth of the chancellary,
 " or be his Hienesse missive letters or charges ; and in all times thereafter
 " be precepts of the chancellary, as fall be directed to the uther estaites :
 " And that all freeholders be taxed for the expences of the commissioners
 " of the schires passing to parliament, or general councells, and letters
 " of poinding or horning to be direct for payment of the summes taxt
 " to that effect, upon ane simple charge of fix days warning alleparly :
 " And that the saids commissioners, autorised with different commis-
 " sions of the sheriffdome fra which they come, sealled and subscribed
 " with six at the least of the barronnes and freeholders thereof, fall be
 " equal in number with the commissioners of burrowes on the articles,
 " and have vote in parliament and general councelles, in time cum-
 " ming : And that his Majesty's missives before general councelles fall
 " be directed to the saids commissioners, or certain of the maist ewest of
 " them, as to the commissioners of burrowes in time cumming ; and
 " that the Lords of Council and Session fall zierly direct letters, at the
 " instance of the saids commissioners, for convening of the freeholders,
 " to chuse the commissioners for the nixt zeir, and making of taxation
 " to the effect above written : And that the compeirance of the saids
 " commissioners of the schires in parliaments or general councelles fall
 " relieve the hail remanent small barronnes, and freeholders of the
 " schires, of their suites, and presence aught in the saids parliaments ;
 providing

“ providing always, that the said small baronnes observe their provisions and conditions maid to his Majesty : Upon the which declaration and ordinance maid and pronounced be our Sovereine Lord, sittand in plane parliament, as said is, John Murray of Tullibardin askt actes and instruments ; and David Earl of Crawford, Lord Lindsay, for himself, and in name and behalf of others of the nobility, protesting in the contrair.”

The opposition which appears to have been made to this act, by some of the nobles, was to be expected from its evident tendency to abridge their authority. And it was probably owing to that opposition that the general enactment of 1427 was restricted by the clause excluding such freeholders from a voice in the choice of their representatives, as were not possessed of a forty-shilling land held of the crown, so as the King might not have it in his power to controul the elections of representatives, by his influence with a multitude of poor dependents.

With that single and salutary restriction, the enactment of the statute last recited, is full as broad as that of the act 1427. The persons to be present, and to have vote in the election of commissioners, are “ all freeholders of the King, under the degree of prelates and Lords of parliament.” It will not be pretended, that the eldest son of a Peer, being a lay freeholder, could be considered either as a prelate, or as a Lord of parliament : And no farther exceptions are to be found in the act.

By the laws in observance, prior to the act 1587, every commoner in the kingdom, who was a crown vassal, had an undoubted right to be present personally in parliament. The single alteration in the constitution introduced by that act, was, that those commoners who before sat in parliament in their individual rights, were thereafter to send representatives chosen by themselves out of their own order. Every person, therefore, who, prior to that statute, was, in virtue of his freehold, a member of parliament, indisputably was, subsequent thereto, (if possessed of the legal qualification) a member of the elective body, empowered by the statute to send representatives to parliament.

It hath been shewn, that, prior to the year 1587, nothing appears in the history of parliament to warrant a supposition, that the eldest sons of Peers were ever considered as not of the order of commons. On the contrary, in all the enumerations of the members of the higher order, the eldest sons of Peers are uniformly left out. At the same time, your Lordships see them possessed of crown charters of lands, and taking their seats in parliament along with other freeholders, from the earliest times of which we have authentic accounts, and continuing through a whole century thereafter to exercise their rights, without interruption or challenge.

From these facts, it is submitted to be clear, that, *upon the day before passing the act 1587*, a Peer's eldest son stood precisely upon the same footing with any other freeholder in Scotland, under the degree of nobility. Upon that day he was a commoner, and, if a crown vassal, unquestionably entitled to a seat in parliament in his own right. And, *upon the day after the act passed*, unless the act itself says otherwise, he certainly was a commoner still; and if possessed of a forty-shilling land, holding of the Crown, he was, beyond the possibility of dispute, a constitutional and legal member of the body of commoners authorised by the statute to choose commissioners to represent them in parliament.

Your Lordships have the act at full length before you. And the respondent trusts, it will be allowed, that he puts the matter on a fair issue, when he declares, that, if you find in that act a clause disfranchizing the eldest sons of Peers, or implying, upon sound construction, such an intention of the legislature, he will, however reluctantly, yield up his claim to what he has hitherto been happy to consider as his birth-right.

In the mean time, the respondent is perfectly satisfied, that no disfranchisement, or exclusion of those commoners who happened to be the eldest sons of Peers, from the rights and privileges of other freeholders, either is expressly enacted, or was meant by the act 1587. Indeed, a little attention to the circumstances previously noticed, must shew the extreme improbability, not to say more, of such a supposition.

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Such being the situation of matters under the act 1587, your Lordships will now be pleased to look at the act 1661, which is the next appearing in the statute-book relative to this subject. "The King's Majesty, considering *that divers debates have formerly* Act 1661, *occurred concerning the persons who ought and should have a* c. 35. *vote in the election of commissioners from the several shires of this kingdom to parliament, and who are capable to be commissioners to parliament, and that it is necessary, for the good of his service, that the same be cleared for the future,* doth therefore, with advice and consent of his estates of parliament, statute, enact, and declare, *That beside all heritors who hold a forty-shilling land of the King's Majesty in capite, that also all heritors, liferenters, and wadsetters, holding of the King, and others who held their lands formerly of the bishops or abbots, and now hold of the King, and whose yearly rent doth amount to ten chalders of victual, or one thousand pounds, (all feu-duties being deducted), shall be, and are capable to vote in the elections of commissioners of parliaments, and to be elected commissioners to parliaments, excepting always from this act, all noblemen and their vassals.* And it being just, that those who shall be chosen, and accordingly shall attend his Majesty's and the kingdom's services in parliaments, have allowance for their charges; his Majesty doth therefore, with advice foresaid, modify and appoint five pounds Scots of daily allowance to every commissioner from any shire, including the first and last days of the parliament, together with eight days for their coming, and as much for their return from the farthest shire of Caithness and Sutherland, and proportionally at nearer distances; *and that the whole freeholders, heritors, and liferenters, holding of the King and Prince, shall, according to the proportion of their lands and rents lying within the shire, be liable and obliged in the payment of the said allowance, excepting noblemen and their vassals, for payment of which, all execution of horning, poinding, and quartering, is to pass, as for raising of the excise, and that according as the time and days of the parliament shall be attested under the clerk of register's hand. And because at this time some commissioners of shires have been put to*

“ extraordinary expences, in providing of foot-mantles for the riding of
 “ the parliaments, it is hereby statute, that the commissioners shall be
 “ relieved of the prices thereof, to be given in under their hands ; and
 “ that the prices of the foot-mantles be raised in the same way, and by
 “ the same execution, with the daily allowance aforesaid, the commis-
 “ sioners always, at the rising of each parliament, making the foot-
 “ mantles forthcoming to the shire, to be disposed as they shall think
 “ fit.”

This act virtually ratifies the former one of 1587, in as far as it confers the right of voting upon *all heritors* holding a forty-shilling land of the King *in capite* ; and it introduces another qualification, in like manner, in favour of *all heritors*, liferenters, and wadsetters, holding lands of the King, of the yearly rent of ten chalders of victual, or 1000 l. As to the persons within the meaning of the statute, the enacting words are sufficiently broad to comprehend all commoners, and, among these, the eldest sons of Peers. This, however, is placed beyond controversy, by adding the *exception* of “ noblemen and *their* vassals.”

May 12.
1662.

It has been said, indeed, that the exception of *noblemen* includes the eldest sons of Peers. But this is clearly proved to be a mistake, by the act passed in the year following, restricting the privilege of being present at the debates in parliament to the persons therein named. By this act, it is provided, “ That none be admitted to stay in parliament but the
 “ *ordinary* members of parliament, viz. the archbishops and bishops,
 “ *noblemen*, officers of state, commissioners from shires and burghs,
 “ and the clerk register, deputed, and servants employed by him to
 “ serve in the house ; and *besides* these, admittance is allowed to the
 “ *eldest sons*, and apparent heirs-male of *noblemen*, to the senators of
 “ the college of justice, to the knight marischall, to the ushers, to the
 “ lyon, to the justice deputed, to the King’s agent ; one servant al-
 “ lowed to the chancellor, two to the constable, two to the marischall,
 “ and one to the advocate : And it is ordained, that none presume to
 “ sit on the benches, save the *nobility* and clergy : That the officers of
 “ state

“ state sit on the steps of the throne ; that the commissioners from
 “ shires and burghs sit on the forms appointed for them ; *that noble-*
 “ *men’s eldest sons and heirs* foresaid, sit on the lower benches of the
 “ throne ; that the lords of session sit at a table, which is to stand
 “ betwixt the throne, and the commissioners of burghs.”

This act clearly shews, that the term *noblemen*, in the preceding act 1661, is synonymous to that of *lords of parliament*, used in the act 1587.

Upon the whole, therefore, the respondent can have no doubt that your Lordships will be clearly of opinion, that, under the act 1661, referring to the act 1587, and illustrated by that of 1662, the eldest sons of Peers are entitled to all the privileges of other commoners.

The next statute relating to this question, is that of 1681, c. 21., by which it is enacted, “ That none shall have vote in the elections of Act 1681.
 “ commissioners for shires or stewartries, which have been in use to be ^{c. 21.}
 “ represented in parliament and conventions, but those who at that
 “ time shall be publicly infest in property or superiority, and in pos-
 “ session of a forty shilling land of old extent, holden of the King
 “ or Prince, distinct from the feu-duties in feu-lands ; in where the
 “ said old extent appears not, shall be infest in lands liable in public
 “ burden, for his Majesty’s supply, for four hundred pounds of valued
 “ rent, whether kirk-lands now holden of the King, or other lands
 “ holding feu, waird, or blench of his Majesty, as King or Prince of
 “ Scotland.” This act further “ Ordains *the whole freeholders* of each
 “ shire and stewartry having election of commissioners, to meet and con-
 “ vene at the head burghs thereof, and to make up a roll of *all the*
 “ *freeholders* within the same.”

It must be unnecessary to observe, that the enactment of this statute, like all the former ones, is perfectly general, comprehending *all freeholders*, without exception ; and consequently the eldest sons of Peers, possessing the qualifications required by it. And by this act, your Lordships know, the right of standing upon the roll of freeholders, conti-
 nued

Act 1706.
c. 8.

nued to be regulated at the time of the Union ; by an article of which, it was declared, “ That none shall be capable to elect, or be elected, to represent a shire, or burgh, in the parliament of Great Britain, for this part of the united kingdom, *except such as are now capable, by the laws of this kingdom, to elect*, or to be elected as commissioners for shires or burghs to the parliament of Scotland.”

Act 16 Geo.
II. c. 2.

The right of the eldest sons of Peers, being thus neither strengthened nor impaired by the articles of Union, but left to be determined by the existing laws of Scotland at the time, it seems necessary only to take notice farther of the act of the 16th of the late King, which, in terms equally general and comprehensive with all the prior statutes, “ Enacts and declares, that no person is, or shall be entitled to vote for a commissioner to serve in parliament, for any shire or stewartry in that part of Great Britain called Scotland, or to be inrolled in the roll of electors, in respect of the old extent of his lands, holden of the King or Prince, unless such old extent is proved by a retour of the lands, of a date prior to the 16th day of September 1681.” The expression, that “ no person shall be entitled to be inrolled in the roll of electors, unless the old extent of his lands is proved by a retour, of date prior to 1681,” is the same as if the act had said, that every person (not expressly disqualified by statute) the old extent of whose lands is proved by a retour prior to 1681, shall be entitled to be inrolled.

It is already shewn, that both by the spirit and the words of all the acts of parliament relating to this question, the eldest sons of Peers, possessing freehold estates, *are qualified* to be put on the roll of electors : And, consequently, the respondent, who is seised in the feudal right of an estate affording a legal qualification, and who produced to the meeting of freeholders the specific statutory evidence thereof, was clearly entitled to be put upon the roll.

In respect whereof, &c.

JOHN MORTHLAND.

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